No. 07-872

IN THE

Supreme Court of the United States

CSX TRANSPORTATION, INC.,
Petitioner,

v.

UNITED TRANSPORTATION UNION, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the court of appeals properly affirmed summary judgment in this case as to "John and Jane Doe" employees of petitioner, when petitioner neither named nor served individual employees/defendants during the fifteen months the case was pending in the district court; disavowed the need for discovery to respond to a summary judgment motion; and where any claims against heretofore unnamed defendants would be untimely under the Railway Labor Act.

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Neither of the respondents has a parent corporation or has stock owned by a publicly held company.

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STATEMENT OF THE CASE

Petitioner CSX Transportation, Inc. ("CSXT") filed this lawsuit in July 2005 claiming that the United Transportation Union ("UTU") was orchestrating an illegal work stoppage at a train terminal in Erwin, Tennessee. Included in the case caption as defendants were "John and Jane Doe UTU-Represented CSXT Employees Nos. 1 Through 100, Addresses Unknown." Complaint, RE 1. The district court denied CSXT's motion for a preliminary injunction. The UTU then moved for summary judgment. During the summary judgment briefing, CSXT emphatically assured the district court that "discovery is not

necessary under Fed. R. Civ. P. 56(f)" for it to oppose summary judgment. CSXT Mem. Opp. Mot. Protective Order, Dkt. 52 at 8; *see also id.* at 2. Moreover, at no point did CSXT seek to amend its complaint to identify which of its employees were the "Doe" defendants.

After full briefing and an opportunity for CSXT to supplement the record, the district court issued summary judgment in September 2006. The court found that there was no evidence to support a claim that the UTU was involved in any illegal job action. Addressing CSXT's claim that "individual employees" had engaged in a work stoppage, the district court held that "Plaintiff . . . provided no evidence that any individual employee coordinated or discouraged any trainman from seeking work during the relevant time period," despite the fact that CSXT as their employer had the "authority to investigate individual employee conduct and discipline . . . workers." Pet. 13a. In short, the district court held that CSXT "has not produced any evidence that any illegal job action occurred." Pet. 14a.

CSXT appealed, arguing that triable issues regarding the alleged job action warranted denial of summary judgment, and that the district court should have permitted it to take more discovery before ruling. The court of appeals affirmed, in an unpublished *per curiam* decision. With respect to the discovery issue, the court "reject[ed] CSX's argument . . . because CSX explicitly asked the court to proceed to rule on the summary judgment motion" without waiting for additional discovery. Pet. 2a. With respect to the merits of summary judgment, the court declined to reach the question of whether CSXT had adduced any evidence that a work stoppage occurred

(noting it to be a "close question"), but affirmed instead on the ground that there was no evidence of involvement by the UTU in any work stoppage. Pet. 2a.

Finally, while the issue had not been raised by CSXT at any point either below or on appeal, the court addressed the fact that CSXT had named the "John and Jane Doe" defendants in its Complaint. The court held that this caption is "no impediment to the closing of this case because the Federal Rules do not authorize suit against fictitious parties." Pet. 3a.

CSXT sought rehearing, focusing for the first time on the "John Doe" issue, but "no Judge in regular active service on the Court . . . requested that the Court be polled on rehearing en banc." Pet. 16a.

REASONS FOR DENYING THE WRIT

This case involves the straightforward application of generally-accepted federal court practice to dismiss claims against "John Doe" defendants who remain unidentified after a full opportunity for discovery. CSXT's effort to contrive a circuit split is unavailing, because all circuits would dispose of this case in a similar fashion. Certiorari is also unwarranted because it would not change the outcome below. Even if CSXT obtained the full relief it now seeks, and the case were remanded to the district court for proceedings against the "John Does," such claims would be time-barred. Finally, CSXT's suggestion that the proper operation of the Railway Labor Act in the southeastern United States is imperiled by the footnote in the decision below is unsupportable.

1. Petitioner seeks certiorari on the premise that the Eleventh Circuit has, alone among the appellate

courts, adopted a "rule . . . that a complaint may not include unnamed defendants." Pet. 1. This is not correct. There is no meaningful division among the circuit courts with respect to "John Doe" defendants, particularly when, as here, the issue arises at summary judgment.

Under Eleventh Circuit precedent, when a plaintiff "is unwilling or unable to use a party's real name," or "may be able to describe an individual . . . without stating his name precisely or correctly," he or she is permitted to identify the defendant by a "fictitious name." *Dean v. Barber*, 951 F.2d 1210, 1215-16 (11th Cir. 1992) (citations and quotations omitted). This approach is consistent with that of other courts of appeals. *See, e.g., Billman v. Indiana Dep't of Corrections*, 56 F.3d 785, 789 (7th Cir. 1995); *Gillespie v. Civiletti*, 629 F.2d 637, 643 (9th Cir. 1980); *Schiff v. Kennedy*, 691 F.2d 196, 198 (4th Cir. 1982).

Petitioner asserts that the Eleventh Circuit has formulated a "rule" which "deems the use of unnamed defendants to amount to the prohibited use of 'fictitious parties.'" Pet. 9. But *Dean* makes clear this is not the case, and the decision which purportedly sets forth the challenged "rule," *New v. Sports & Recreation, Inc.*, 114 F.3d 1092 (11th Cir. 1997), did no such thing. The plaintiff in *New* sued "fictitious defendants A, B and C" in addition to others; plaintiff later moved the trial court to strike her own claims against the fictitious parties; the motion was granted, and was not challenged on appeal. 114 F.3d at 1094. Thus, *New* never reached the issue of how to treat "fictitious parties," and there is no evidence that its so-called "rule" has been

applied in any way contrary to the *Dean* decision or, indeed, the decision of other Circuits.[1]

It is also uniformly held, including in the Eleventh Circuit as evidenced by this case, that "eventually the plaintiff must discover the names of the defendants in order to serve summonses on them and thus establish the court's personal jurisdiction, without which the suit must be dismissed." *Billman*, 56 F.3d at 789; *accord*, *Schiff*, 691 F.2d at 198 ("if it does not appear that the true identity of the unnamed party can be discovered . . . the court could dismiss the action"); 5A Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1321 (3d ed. 2004) ("most federal courts typically will allow the use of a fictitious name in the caption so long as it appears that the plaintiff will be able to obtain [the true identity] . . . ; should that not prove to be true, the action will be dismissed"); 2 James Wm. Moore *et al.*, *Moore's Federal Practice* § 10.02[2][d][i] (3d ed. 2007) ("If reasonable inquiry would have revealed the true identity, a pleading naming John Doe defendants will be dismissed.").

The outcome below was entirely consistent with this uniform practice. Petitioner named 100 "John and Jane Doe" defendants when it filed suit, but at

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[1] Petitioner cites a list of district court cases which purportedly adhere to the "rule" of *New*, but the decisions do not reflect this. In the only two published decisions cited by petitioner, the trial courts acknowledged that "fictitious parties" could be sued "when the plaintiff [is] . . . able to describe an individual . . . without stating his name precisely or correctly," *Mahmud v. Oberman*, 508 F. Supp. 2d 1294, 1297 n.1 (N.D. Ga. 2007), but that a "John Doe" who "has never been identified in . . . three and a half years" may be properly dismissed, *Owaki v. City of Miami*, 491 F. Supp. 2d 1140, 1155 (S.D. Fla. 2007).

no point between July 2005 (when it filed suit) and September 2006 (when summary judgment was entered), did it more particularly identify, or name, or serve any of these alleged people. Nor did CSXT oppose summary judgment on the ground that it needed discovery to identify those employees; instead it disavowed the need for discovery.[2] Thus, it could not even conceivably have been erroneous, or in conflict with any judicial decision, for the district court to enter summary judgment and the court of appeals to affirm with respect to the "John Does." There is no basis for this Court to grant the writ in this case.

2. Certiorari is also unwarranted because granting the writ here would not change the outcome of this litigation.

As noted above, the Eleventh Circuit affirmed the district court's holding that there was no evidence that the UTU or any union representative participated in, encouraged or supported any unlawful job action. Petitioner does not challenge that holding, but has limited its further challenge to the treatment of the "John and Jane Doe" defendants. As a practical matter, petitioner would have this Court reverse the Eleventh Circuit and remanded the case to "proceed[] with its RLA suit against the unnamed individual union members on the theory that they had engaged in a forbidden wildcat strike." Pet. 6.

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[2] In contrast to *Bivens* and similar cases where a plaintiff has no way of knowing who may have injured him, CSXT as the employer of the "John Does" knew exactly which of its employees signed up for work and when, and had the contractual authority to investigate the reasons for the timing of their return to work. Nothing prevented CSXT from naming and serving any individual as a defendant in this action.

Such a claim would be untimely. In *DelCostello v. International Brotherhood of Teamsters*, 462 U.S. 151 (1983), this Court rejected application of state law limitations periods to federal labor law claims, and applied a uniform federal six-month limitations period to labor claims which are akin to unfair labor practice claims.[3] Since *DelCostello*, the courts of appeals have uniformly applied a strict six-month statute of limitations to Railway Labor Act claims such as those advanced by petitioner here. *See Atlas Air, Inc. v. ALPA*, 232 F.3d 218, 226 (D.C. Cir. 2000); *AFA v. Horizon Air Indus., Inc.*, 976 F.2d 541, 548 (9th Cir. 1992); *IAM v. Aloha Airlines, Inc.*, 790 F.2d 727, 734-36 (9th Cir. 1986); *BLE v. Atchison, Topeka & Santa Fe Ry. Co.*, 768 F.2d 914, 919 (7th Cir. 1985).[4]

In this case, the limitations period began to run in July 2005, when the alleged strike took place. By now, in 2008, more than six months have passed and the substitution of named defendants for "John and Jane Does Nos. 1-100" would be denied as untimely. *See Wayne v. Jarvis*, 197 F.3d 1098, 1102-04 (11th Cir. 1999) (claims against named party substituted for a "John Doe" do not relate back to original complaint for limitation purposes); *see also Garrett v. Fleming*, 362 F.3d 692, 696 (10th Cir. 2004)

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[3] In *West v. Conrail*, 481 U.S. 35 (1987), the Court applied *DelCostello* to Railway Labor Act claims.

[4] To be sure, the former Fifth Circuit did hold, in a pre-*DelCostello* decision, that claims under Section 6 of the RLA should be subject to an analogous state law limitations period. *See UTU v. Florida East Coast Ry. Co.*, 586 F.2d 520, 526-27 (5th Cir. 1978). But this approach was squarely rejected by *DelCostello*, which adopted the uniform six-month period as a matter of federal labor policy.

(collecting cases); *Garvin v. City of Philadelphia*, 354 F.3d 215, 220-21 (3d Cir. 2003); *Tapia-Ortiz v. Doe*, 171 F.3d 150, 152 (2d Cir. 1999); *Sassi v. Breier*, 584 F.2d 234, 235 (7th Cir. 1978).

3. Petitioner is also mistaken in urging that either the decision below or the supposed Eleventh Circuit "rule" could hinder application of the Railway Labor Act. As an initial matter, there is no reason for any court to apply a unique rule for "John Doe" defendants in the Railway Labor Act context. Moreover, the Eleventh Circuit has applied the very rule which petitioner urges this Court to adopt in a very similar RLA case.

In *Delta v. ALPA*, 238 F.3d 1300 (11th Cir. 2001), Delta Airlines sued its pilots' union, individual named pilots, and "one hundred 'John Does' and one hundred 'Jane Does,'" seeking an injunction against an ongoing job action. 238 F.3d at 1303 n.9. The Eleventh Circuit directed the district court to enjoin the union and further held that if that injunction was not effective "the district court [sh]ould . . . join all appropriate parties as defendants . . . and enjoin them from engaging in continued activity in violation of the CBA." *Id.* at 1310; *see also id.* at 1311 ("Delta may return to the district court for injunctive relief against individual pilots"). Thus, petitioner's contention that the enforceability of the Railway Labor Act is in jeopardy within the Eleventh Circuit's jurisdiction is simply erroneous.

CONCLUSION

Respondents respectfully request that the petition for a writ of certiorari be denied.

Respectfully submitted,

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